Because air-ground capacity is limited, however, no spare capacity is available to be resold in bulk to another carrier. In addition, the shared spectrum arrangement in the air-ground services complicates resale compensation. Thus, even if a reseller could enter into a resale agreement with a facilities-based air-ground provider,[49] any such agreement would not only need to compensate the underlying provider for the use of its facilities, but would also need to compensate other air-ground providers for the diminished spectrum capacity available as a result of the resale traffic.

Finally, strong competition in the air-ground services market obviates the need for a resale requirement. The Commission has consistently found, and GTE generally agrees, that open resale increases competition. However, in the case of air-ground service, resale is not needed to increase competition. In developing rules for air-ground service, the Commission adopted an open-entry policy whereby the allocated spectrum is available to all entrants on an equal, shared basis. This system ensures that market entry is available to all entities that satisfy FCC licensing qualifications.[50] Currently, three strong providers compete in the air-ground service market.[51] The existence of these competitors,

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49 Assuming also that the problems discussed above could somehow be resolved.

50 *See Air Ground Order* at 3869-3871.

51 The air-ground marketplace, given the limited spectrum and the nature of the customer base, is only capable of sustaining a handful of service providers.

plus the open entry policy ensure that the air-ground services is a competitive market, and will remain so even without a resale requirement.[52]

3. The FCC Should Limit the Time During Which CMRS Licensees are Required to Resell Service to Other Licensees in the Same or Overlapping Market

In the *Second NPRM*, the Commission tentatively concluded that a time limitation on the obligation of one facilities-based CMRS provider to permit another facilities-based CMRS provider in the same or overlapping market to resell its services is appropriate. The Commission sought comment on how long the facilities-based resale window should remain open in order to strike the most appropriate balance between allowing a new facilities-based provider to enter the market quickly and encouraging competing carriers to construct their own facilities.[53]

GTE agrees with the Commission that some form of sunset date should apply to the obligation of a facilities-based carrier to permit another such carrier to resell its services. Like the Commission, GTE believes that requiring resale with a sunset period will allow new CMRS licensees to enter the market quickly, while still encouraging such carriers to construct facilities in a timely fashion. GTE suggests, that for the 1.8 GHz PCS market, there is no reason to require resale to a facilities-based carrier after five years from the date the license is

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52 Indeed, in the *CMRS Second Report and Order,* the Commission affirmed that all air-ground service providers are nondominant. In reaching this conclusion, the Commission relied on the open entry policy the existence of competitive pressure created by multiple airlines seeking quality service at low prices. *CMRS Second Report and Order* at 1469-1470 (para. 144).

53 *Second NPRM* at 44-46.

issued. GTE believes that five years at most should be allowed, because Commission rules for PCS licensees of 30 MHz blocks require one-third build-out by that time.[54]

In addition, GTE requests that the Commission's resale policy for facilities-based CMRS providers recognize the right of the underlying facilities-based carrier to negotiate resale agreements that will compensate the carrier fully for expenditure on facilities built specifically to meet the resale needs of other facilities-based providers. GTE is concerned that underlying facilities-based providers will incur costs to construct facilities in order to meet the resale needs of other licensees.[55] Once the licensees construct their own facilities and remove their traffic from the underlying carrier's network, the underlying carrier may, for a time, have inadequate demand to fully utilize its facilities.

Additionally, much of the early investment to meet the needs of these facilities-based resellers may be in analog equipment. Given that the industry will eventually deploy digital equipment, resale to facilities-based carriers may cause an analog excess which will not be recovered by the underlying carrier. Accordingly, the Commission's resale policy must give initial carriers the flexibility to negotiate terms and conditions that account for both underutilized and obsolete analog investment attributable to resale to facilities-based carriers.

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[54] 47 C.F.R. § 24.203(a). Licensees of 10 MHz spectrum blocks must complete 25% build-out after five years. 47 C.F.R. § 24.203(b).

[55] This practice causes particular concerns for PCS where an underlying facilities-based provider may be required to resell to as many as five other facilities-based providers.

4. The Commission Should Not Adopt the Reseller Switch Proposal and Should Explicitly Preempt State Authority to Mandate Reseller Switch Interconnection

The Commission tentatively concluded in the *Second NPRM* that it should not adopt a proposal to allow resellers to install their own switching equipment between the cellular network mobile telephone switching office ("MTSO") and the facilities of the LEC and the interexchange carrier, and to interconnect such switches with the MTSO. In reaching its tentative conclusion, the Commission noted that up to 9 competitors (2-cellular, 6-broadband PCS, and 1-wide area SMR) will provide CMRS in each market. It stated that these entities will compete directly with cellular service and thus provide a significant check on inefficient or anticompetitive behavior, obviating the need to allow resellers to enter the switching market. Moreover, the Commission recognized that requiring interconnection of switches may impose costs on the Commission, the industry and consumers.[56]

The Commission's tentative conclusions mirror in many ways comments filed by GTE earlier in this proceeding. There, GTE opposed the so-called "reseller switch proposal" because interconnection of this type would impose additional costs on cellular carriers, and because it would not enable resellers to provide any additional services.[57] GTE continues to believe that the reseller switch proposal would impose significant costs while providing little, if any,

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56 *Id.* at 48 (para. 96).

57 GTE Comments, September 12, 1994, at 46-47.

benefits to consumers. Accordingly, GTE concurs with the Commission's tentative conclusion.

In addition, GTE requests that the Commission explicitly preempt states from mandating direct interconnection with reseller switches. The FCC should preempt state-imposed reseller switch interconnection because state interconnection requirements would thwart the FCC's proposed policy regarding reseller switches and because direct interconnection of reseller switches is inextricably intertwined with rates issues.

GTE argued above, and the Commission has previously found, that interconnection arrangements cannot be separated into interstate and intrastate components. Accordingly, the Commission has preempted state regulation of CMRS interconnection arrangements.[58] Moreover, the Commission has recently denied state petitions to continue to regulate any CMRS rates.[59]

At least one state, California, has stated its intention to require cellular service providers to allow interconnection directly with reseller switches.[60]

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58 *See* Section II.A.4, *supra*, at 11-12.

59 *See, e.g., California Preemption Order*. The Commission has also denied CMRS rate regulatory authority to the public utility regulatory commissions of the states of Hawaii, Arizona, Connecticut, Louisiana, New York, and Ohio.

60 *See, e.g.,* California Public Service Commission, News Release, "CPUC Will Not Appeal FCC Ruling on Cellular Rate Authority," CPUC-051, released June 8, 1995, in which the California Public Utilities Commission ("CPUC") states that it expects "all cellular carriers with requests from resellers to file specific rates with the FCC for separate elements that make up the cellular delivery system." This pronouncement highlights CMRS providers' concerns that a state would attempt to compel the filing of CMRS rates despite having no jurisdiction over CMRS rates, and despite the FCC's decision to forbear from enforcing the tariff filing requirments set forth in section 203 of the Communications Act.

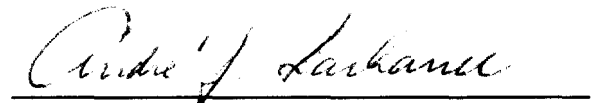
In order to prevent any state from adopting reseller switch interconnection requirements contrary to both federal CMRS interconnection and rate regulation policies, GTE believes that the Commission should issue an order explicitly preempting state action in this area. The FCC preemption order should make clear that states are precluded from requiring reseller switch interconnection, and from ordering rate unbundling as a means of facilitating such interconnection.

III. CONCLUSION

For the reasons stated above, GTE generally supports the tentative conclusions and proposed rules set forth in the Commission's *Second NPRM.* In particular, GTE supports the Commissions proposal not to adopt rules requiring direct interconnection between CMRS providers. GTE also agrees with the Commission's proposal not to adopt regulations requiring roaming arrangements between CMRS providers. GTE supports the Commission's proposal to adopt a resale obligation for CMRS providers similar to that imposed on cellular service providers, but urges the Commission not to require resale in the air-ground services. GTE believes that the resale obligation between facilities-based CMRS providers should have a sunset date. Finally, GTE supports the Commission's proposal not to require CMRS providers to interconnect their switches directly to reseller switches and asks the Commission to explicitly preempt states from requiring CMRS reseller switch interconnection.

Respectfully submitted,

GTE Service Corporation and its telephone and wireless companies



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June 14, 1995

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Certificate of Service

I, Judy R. Quinlan, hereby certify that copies of the foregoing "Comments of GTE" have been mailed by first class United States mail, postage prepaid, on the 14th day of June, 1995 to all parties of record.

Judy R. Quinlan